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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE PRELATE FILED

ORIGINAL

February 6, 1998

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, NW Room 222
Washington, DC 20554

Re: Ex Parte Presentation in CC Docket No. 96-115

Dear Ms. Salas:

On Thursday, February 5, 1998, Frank Krogh, of MCI, Lanese Jorgensen of MCI, and the undersigned, met with Jim Casserly, Senior Legal Advisor to Commissioner Ness. The purpose of the meeting was to discuss issues related to the above-captioned proceeding as filed in MCI's comments. The attached document outlines the topics discussed.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

Kimberly M. Kirby

Attachment

cc: Jim Casserly (w/out attachment)

No. of Copies rec'd 022
List A B C D E

CPNI Issues

Section 222 should be interpreted so as to ensure customer control over CPNI and enable carriers to overcome others' monopoly-derived customer database advantages through the application of marketing skill and effort, thereby fulfilling both its privacy and competitive goals

Meaning of Section 222(c)(1)

"Except ... with the approval of the customer, a ... carrier that receives or obtains [CPNI] by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to [CPNI] in its provision of ... the ... service from which such information is derived ..."

- "Service" should be interpreted to mean "category of service." "All local" and "all interexchange" should be categories around which the restrictions are framed, with wireless and intraLATA toll as "floating" categories. "Single bucket" would effectively eliminate 222(c) completely.
- Absent customer approval, 222(c)(1) only permits use of CPNI for the provision and marketing of service in same category. With customer approval, carrier may "use" CPNI itself or "disclose" it to any other entity.
- Legislative history and text show that restrictions intended to be applied within each carrier and between affiliates; "use ... or permit access to" CPNI can only logically refer to use of CPNI by carrier that already has it.

Type of Approval

"[A]pproval of the customer" in 222(c)(1) requires explicit oral approval following notification informing customer of nature of request and proposed use. Implied or "opt-out" approval would have effect similar to single bucket approach by turning over virtually all CPNI for use by carriers that already have most or all CPNI, snuffing out competition.

- Explicit oral approval would also protect customers' privacy interests more effectively than opt-out approach by ensuring greater customer understanding of approval being sought, thereby maintaining greater customer control over CPNI.

Interplay of 222 and Nondiscrimination Safeguards

Where carrier may disclose CPNI to another entity -- such as where customer gives oral approval under 222(c)(1) or where other entity needs CPNI to initiate service under 222(d)(1) -- carrier must treat all other carriers the same as its own affiliates, under 272(c)(1) and (e)

- BOCs are abusing their monopoly access to CPNI and other information by denying it to MCI. Section 272(c) and (e), as well as Sections 201(b) and 202(a), require that where carrier uses CPNI or discloses it to its affiliate under a particular approval process, same process should be followed in determining whether to disclose to others.

"SEC. 222. PRIVACY OF CUSTOMER INFORMATION.

"(a) IN GENERAL.—Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

"(b) CONFIDENTIALITY OF CARRIER INFORMATION.—A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

"(c) CONFIDENTIALITY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.—

"(1) PRIVACY REQUIREMENTS FOR TELECOMMUNICATIONS CARRIERS.—Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

"(2) DISCLOSURE ON REQUEST BY CUSTOMERS.—A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.

"(3) AGGREGATE CUSTOMER INFORMATION.—A telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service may use, disclose, or permit access to aggregate customer information other than for the purposes described in paragraph (1). A local exchange carrier may use, disclose, or permit access to aggregate customer information other than for purposes described in paragraph (1) only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request therefor.

"(d) EXCEPTIONS.—Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents—

"(1) to initiate, render, bill, and collect for telecommunications services;

"(2) to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or

"(3) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service.

"(e) *SUBSCRIBER LIST INFORMATION*.—Notwithstanding subsections (b), (c), and (d), a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

"(f) *DEFINITIONS*.—As used in this section:

"(1) *CUSTOMER PROPRIETARY NETWORK INFORMATION*.—The term 'customer proprietary network information' means—

"(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

"(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier;

except that such term does not include subscriber list information.

"(2) *AGGREGATE INFORMATION*.—The term 'aggregate customer information' means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

"(3) *SUBSCRIBER LIST INFORMATION*.—The term 'subscriber list information' means any information—

"(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

"(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format."

SEC. 703. POLE ATTACHMENTS.

Section 224 (47 U.S.C. 224) is amended—

(1) in subsection (a)(1), by striking the first sentence and inserting the following: "The term 'utility' means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.";

(2) in subsection (a)(4), by inserting after "system" the following: "or provider of telecommunications service";

(3) by inserting after subsection (a)(4) the following:

"(5) For purposes of this section, the term 'telecommunications carrier' (as defined in section 3 of this Act) does not include any incumbent local exchange carrier as defined in section 251(h).";

Pursuant to the provisions of this section, information providers must obtain legal, informed consent from a caller through either a written pre-authorized contract between the information providers and the caller, or through the use of an instructive preamble at the start of all non-free 800 calls. Both of these options ensure that consumers know there is a charge for the information service and that they are giving their consent to be charged.

Conference agreement

The conference agreement adopts the Senate provisions with modifications. The conferees agreed to close a loophole in current law, which permits information providers to evade the restrictions of section 228 by filing tariffs for the provision of information services. Many information providers have taken advantage of this exemption by filing tariffs—especially for 1-500, 1-700 and 10XXX numbers—and charging customers high prices for the services. This exemption has proven to be a problem because consumers have none of the protections that were enacted as part of the Telephone Disclosure and Dispute Resolution Act (P.L. 102-556). Section 701(b) of the conference agreement closes that loophole.

SECTION 702—PRIVACY OF CUSTOMER INFORMATION

Senate bill

Section 102 of the Senate bill amends the Communications Act to add a new section 252 to impose separate affiliate and other safeguards on certain activities of the BOCs. Subsection (g) of new section 252 establishes rules to ensure that the BOCs protect the confidentiality of proprietary information they receive and to prohibit the sharing of such information in aggregate form with any subsidiary or affiliate unless that information is available to all other persons on the same terms and conditions. In general, a BOC may not share with anyone customer-specific proprietary information without the consent of the person to whom it relates. Exceptions to this general rule permit disclosure in response to a court order or to initiate, render, bill and collect for telecommunications services. For purposes of this subsection the term "customer proprietary information" does not include subscriber list information.

Subsection 301(c) of the Senate bill defines the term "subscriber list information" and requires local exchange carriers to provide subscriber list information on a timely and unbundled basis and at nondiscriminatory and reasonable rates, terms and conditions to anyone upon request for the purpose of publishing directories in any format.

Subsection 301(d) provides that telecommunications carriers have a duty to protect the confidentiality of proprietary information of other common carriers and customers, including resellers. A telecommunications carrier that receives such from another carrier may not use such information for its own marketing efforts.

House amendment

Section 105 of the House amendment adds a new section 222 to the Communications Act. Section 222 establishes privacy protections for customer proprietary network information (CPNI). Section

222(a) imposes on carriers a statutory duty to provide subscriber list information on a timely basis, under nondiscriminatory and reasonable rates, terms and conditions, to any publisher of directories upon request.

Section 222(b)(1)(B) prohibits the use of CPNI "in the identifications or solicitation of potential customers for any service other than the service from which such information is derived."

With respect to section 222(b)(2), the House recognizes that carriers are likely to incur some costs in complying with the customer-requested disclosures contemplated by this section. This section does not preclude a carrier from being reimbursed by the customers or third parties for the costs associated with making such disclosures. In addition, the disclosures described in this section include only the information provided to the carrier by the customer. A carrier is not required to disclose any of its work product based on such information.

In section 222(b)(3), the term "aggregate information" should not be construed as a mechanism whereby carriers are forced to disclose sensitive information to their competitors. Indeed, the key component of "aggregate information" is that such information would have to be able to be disclosed only to those persons who have the approval of the customer. Thus, the House intends that the use of "aggregate information" would be rather limited or restricted.

Section 222(c) states that this section shall not prevent the use of CPNI to combat toll fraud or to bill and collect for services requested by the customers.

Section 222(d) allows the Commission to exempt from its requirements of subsection (b) carriers with fewer than 500,000 access lines, if the Commission determines either that such an exemption is in the public interest or that compliance would impose an undue burden.

Section 222(e) defines terms used in this section.

Section 104(b) directs the Commission to review the impact of converging communications technologies on customer privacy. This section requires the Commission to commence a proceeding within one year after the date of enactment to examine the impact of converging technologies and globalization of communications networks has on the privacy rights of consumers and possible remedies to protect them. This section also directs changes in the Commission's regulations to ensure that customer privacy rights are considered in the introduction of new telecommunications service and directs the Commission to correct any defects in its privacy regulations that are identified pursuant to this section. The Commission is also directed to make any recommendations to Congress for any legislative changes required to correct such defects within 18 months after the date of enactment of this Act.

This section defines three fundamental principles to protect all consumers. These principles are: (1) the right of consumers to know the specific information that is being collected about them; (2) the right of consumers to have proper notice that such information is being used for other purposes; and (3) the right of consumers to stop the reuse or sale of that information.

Conference agreement

The conference agreement adopts the Senate provisions with modifications. Section 702 of the conference agreement amends title II of the Communications Act by adding a new section 222.

In general, the new section 222 strives to balance both competitive and consumer privacy interests with respect to CPNI. New subsection 222(a) stipulates that it is the duty of every telecommunications carrier to protect the confidentiality of proprietary information of and relating to other carriers, equipment manufacturers and customers, including carriers reselling telecommunications services provided by a telecommunications carrier.

New subsection 222(b) provides that a telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose and shall not use such information for its own marketing efforts.

In new subsection 222(c) use of CPNI by telecommunications carriers is limited, except as provided by law or with the approval of the customer. New subsection (c) specifies that telecommunications carriers shall only use, disclose, or permit access to individually identifiable CPNI in its provision of the telecommunications service for which such information is derived or in its provision of services necessary to or used in the provision of such telecommunications service, including directory services. The conferees also agreed upon a provision that will require disclosure of CPNI by a telecommunications carrier upon affirmative written request by the customer, to any person designated by the customer.

The conference agreement also asserts carriers' rights in new subsection 222(d) to use CPNI to initiate, render, bill, and collect for telecommunications service. New subsection (d) also allows use of CPNI to protect the rights or property of the carrier. The conferees intend new subsection 222(d)(2) to allow carriers to use CPNI in limited fashion for credit evaluation to protect themselves from fraudulent operators who subscribe to telecommunications services, run up large bills, and then change carriers without payment.

New subsection 222(e) stipulates that subscriber list information shall be made available by telecommunications carriers that provide telephone exchange service on a timely and unbundled basis to any person upon request for the purpose of publishing directories in any format. The subscriber list information provision guarantees independent publishers access to subscriber list information at reasonable and nondiscriminatory rates, terms and conditions from any provider of local telephone service.

New subsection 222(f) contains definitions of CPNI, aggregate information and subscriber list information.

SECTION 703—POLE ATTACHMENTS

Senate bill

Section 204 of the Senate bill amends section 224 of the Communications Act. Section 204 requires that poles, ducts, conduits and rights-of-way controlled by utilities are made available to cable television systems at the rates, terms and conditions that are just